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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

Federal Communications Commission
Office of the Secretary

In the Matter of)
The Telephone Consumer Protection)
Act of 1991)

CC Docket No. 92-90

ORIGINAL
FILE

To: The Commission

REPLY COMMENTS OF
AMERICAN FINANCIAL SERVICES ASSOCIATION

The AMERICAN FINANCIAL SERVICES ASSOCIATION (hereinafter "AFSA") is submitting the following reply comments in this rulemaking proceeding prior to the Commission's preparation of its regulations to implement the Telephone Consumer Protection Act ("TCPA") and the supplementary explanatory material that will accompany the final regulations. For its reply comments, AFSA states as follows:

Treating All Auto Dialer Calls As Prerecorded Voice Calls

1. The April 17, 1992 Notice of Proposed Rulemaking ("NPRM") provides identical treatment to calls made by automatic telephone dialing systems ("auto dialer calls") and to calls involving artificial or prerecorded voice messages ("prerecorded voice calls"). This treatment appears to be inconsistent with the TCPA. New §227 added to the Communications Act by the TCPA distinguishes between such calls by referring solely to prerecorded voice calls in §§227(b)(1)(B), (b)(2)(A), and (d)(3), by referring solely to auto dialer calls in §227(b)(1)(D), and by referring to both auto dialer and prerecorded voice calls in §227(b)(1)(A).

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2. Despite the above referenced statutory distinctions between auto dialer calls and prerecorded voice calls, it appears from a close review of the explanatory material and the proposed regulations included in the NPRM that the Commission has made a determination that all prerecorded voice calls involve auto dialers and that all auto dialer calls involve prerecorded voice messages.

3. In this regard, AFSA is not now aware of any prerecorded voice calls that do not involve auto dialers. However, the Commission's apparent conclusion that all auto dialer calls involve prerecorded voice messages is not well-founded. This position appears to be based on the view that predictive auto dialer calls which immediately put the called party in touch with a live operator (and which, therefore, do not involve any prerecorded hold message that is activated by the predictive auto dialer system when all live operators are busy) should, nevertheless, be treated as prerecorded voice calls for purposes of the TCPA and its implementing regulations.

4. The Commission's conclusions in this regard appear to misplaced since, as stated in paragraph 15 of the supplementary material in the NPRM, the prerecorded hold message is activated in only a small percentage of predictive auto dialer calls.

5. If this is not the Commission's conclusion, the final regulations or their accompanying supplementary material should clearly indicate the predictive auto dialer calls are not subject to the provisions of §§227(b)(1)(B), (b)(2)(A), and

(d)(3). If this is the Commission's conclusion, we believe it is imperative for the Commission to set out its views in this regard in the final regulations or in their accompanying supplementary material.

6. In either event, clarification is essential in order to avoid unnecessary confusion and conflicting judicial rulings which would otherwise inevitably follow in litigation for claimed violations of these provisions of the TCPA and its implementing regulations.

Incorporation Of AFSA's Prior Comments

7. In its prior comments to the Commission, AFSA agreed with the position expressed in the NPRM that privacy rights protected by the TCPA are not adversely affected by calls when there is or was a business relationship between the caller and the called party. Accordingly, AFSA supported the Commission's decision (as set out in §64.1100(c)(3) of the proposed regulation and supplementary paragraphs 13 through 16 of the NPRM) that prerecorded voice calls to residential phone lines should be permitted when there is a current or prior business relationship between the caller and the called party.

8. To further illustrate this business relationship exemption in the context of creditor-debtor transactions, we asked the Commission to incorporate provisions in the final rulemaking which state that (i) current credit relationships not only encompass contemporary contacts between the parties but extend over the duration of the credit agreement, and (ii) parties authorized to make calls under this exemption include


persons who acquired interests in credit transactions by purchase or assignment from prior creditors as well as persons who service "private label" credit accounts.

9. With respect to debt collection calls, AFSA also requested that the Commission state in the final regulations that a consumer's entry into a credit agreement constitutes the consumer's prior express consent to being called if the terms of the credit agreement were not met. Finally, because of the Commission's request for comment as to whether debt collection calls warranted a special exception apart from the business purpose exemption, AFSA urges the Commission to include an express exemption for debt collection calls in §64.1100(c).

10. Because AFSA believes that these prior comments remain valid and would be helpful to the credit industry without adversely affecting the protections afforded under the TCPA, we again request the Commission to consider and incorporate each of these points in its final rulemaking.

Respectfully submitted

AMERICAN FINANCIAL SERVICES ASSOCIATION

By 
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